Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1568

JOYOUS JUNQUES, INC.

Petitioner

v.

JOSEPH MILLER, GENERAL PARTNER
WHITEHURST ASSOCIATES

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioner, Joyous Junques, Inc., respectfully prays that a writ of certiorari issue to review the judgment, District of Columbia Court of Appeals filed in this proceeding on December 15, 1976, and order denying petitioners request for reconsideration and hearing en banc, filed on January 10, 1977 (see Appendix No. 2, pp. 4a-6a), and denied on February 11, 1977 (see Appendix No. 3, p. 7a).

OPINIONS BELOW

The District of Columbia Court of Appeals entered judgment on December 15, 1976 (see Appendix No. 1, pp. 2a and 3a), affirming the judgment of the Superior Court of the District of Columbia and denied Petitioner's Petition for Reconsideration and Hearing En Banc on February 11, 1977 (see Appendix Nos. 2 and 3, pp. 4a-7a). Further, the District of Columbia Court of Appeals, by Order dated June 22, 1976 (see Appendix No. 4, pp. 8a and 9a), declined jurisdiction upon Petitioner's request that the Court enjoin further proceedings until it resolved the question of the absence of reciprocal privileges for District of Columbia resident attorneys into the courts of Maryland and Virginia. [See Application to Supreme Court to Stay Eviction, No. A-348, "Denied, W. E. B., 10/21/75."]

JURISDICTION

Jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1257, as amended to July 29, 1970, Public Law 91-358, Title I, Section 172(a)(1), 84 Stat. 590. The JUDGMENT of the Appellate Court was entered on June 22, 1976 (see Appendix No. 4, pp. 8a and 9a); and a petition for reconsideration and hearing en banc (see Appendix No. 2, pp. 4a-6a), was timely filed, and denied on February 11, 1977 (see Appendix No. 3, p. 7a):

> "The petition of appellant Joyous Junques, Inc., for a hearing *en banc* having been transmitted to the judges of this Court for consideration, and no judge having called for a vote with respect thereto, it is
>
> ORDERED that the aforesaid petition for a hearing *en banc* is denied."

QUESTIONS PRESENTED

1. Was the Petitioner, a leasehold sub-tenant, denied due process and equal protection of the law, when the lower Court held that he had no rights of possession either at law or equity with respect to his sublease or to the lease between the owner and the tenant?

2. Was the Petitioner denied due process and equal protection of the law when the court declined jurisdiction to determine the issue of reciprocity of lawyers to practice in the District of Columbia and Maryland and Virginia?

3. Can a lawyer who is admitted to practice law before the Supreme Court be denied the right to practice law in a Federal Court located in a state in which the lawyer is not a resident?

STATUTES INVOLVED

ARTICLE V, UNITED STATES CONSTITUTION

> . . . nor be deprived of life, liberty, or property, without due process of law.

AMENDMENT V, UNITED STATES CONSTITUTION

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

TITLE 45, SECTION 906 (1973), DISTRICT OF COLUMBIA CODE:

> Every notice to the tenant to quit shall be served upon him personally, if he can be found, and if he cannot be found, it shall be sufficient

service of said notice to deliver the same to some person of proper age upon the premises, and in the absence of such tenant or person to post the same in some conspicuous place upon the leased premises.

RULES INVOLVED

SUPREME COURT RULE 19(1)(a).

RULE 5(b), DISTRICT OF COLUMBIA SUPERIOR COURT LANDLORD AND TENANT RULE:

In actions in this branch for recovery of possession of property in which the basis of recovery is nonpayment of rent or in which there is joined a claim for recovery of rent in arrears, the defendant may assert an equitable defense of recoupment or set-off or a counterclaim for a money judgment based on the payment of rent or on expenditures claimed as credits against rent or for equitable relief related to the premises. No other counterclaims, whether based on personal injury or otherwise, may be filed in this branch. This exclusion shall be without prejudice to the prosecution of such claims in other branches of the court.

RULE 16(a), DISTRICT OF COLUMBIA SUPERIOR COURT LANDLORD AND TENANT RULE:

A prepared writ of restitution valid for twenty days and the United States Marshal's Three-Day Notice To Tenant shall be filed with the clerk at the time that said writ is ordered. If alias writs of restitution are ordered, prepared writs and notices shall be filed with the clerk. The clerk shall deliver the original or alias writ and

notice to the Marshal, who shall mail all such notices to the tenants before executing the original or alias writs.

STATEMENT OF THE CASE

Petitioner, a leasehold sub-tenant, for years and with the knowledge and consent of the owner, signed and leased a section of the owner's premises from the tenant. Two days later the owner signed and leased the entire premises to the tenant.

Both leases were prepared by the tenant, a leasing agent who received a commission and the first option to buy the premises from the owner, a real estate broker. The leases were similar and were identical in terms of years. Benefits and prohibitions ran from, through and between both leases.

Eighteen months later, the owner, based upon the verified complaint of his attorney, filed a complaint against the tenant for possession of the property. The court granted summary judgment for possession of the property for the owner and issued a writ of restitution for the entire premises.

The owner had knowledge of the lease of the sub-tenant and of the sub-tenant's possession of the premises, when he filed the complaint for possession against the tenant. The owner did not give the sub-tenant notice, name him in the complaint for possession or serve him with a copy of the complaint for possession.

The sub-tenant in an effort to stay his eviction, posted $10,000.00 in cash in the registry of the court, alleged he had not breached his lease, had no notice of the complaint and judgment for possession and made a plea for equitable relief to the court.

The court entertained the plea for equitable relief but ruled that it would not set aside the summary judgment for possession of the premises, obtained by the owner.

The court refused to recognize the sub-tenants lease, denied the Petitioner equitable relief and refused to hold a hearing of the tender of rent made by the sub-tenant with the prior knowledge and consent of the owner and tenant. [The sub-tenant Petitioner states that if he had been given a hearing by the trial judge he would have been prepared to show the petitioners antiques had been consigned to the tenant, petitioner sub-tenant owned one third of the stock of the tenant Georgetown Antiques and Artisans Inc. and that Petitioner sub-tenant tendered to and was able to pay all back rent due, costs, and interest owed by tenant to owner. The sub-tenant has acknowledged that the owner was entitled to payment for back rent, interest, and cost. Further, the sub-tenant states that the owner would have accepted this back rent with interest and costs from the sub-tenant had the court held a hearing as requested on the tender; additionally this court would award the owner the money from the bond posted by the sub-tenant in further derogation of the sub-tenant's rights. Petitioner further states that the owner was aware of these circumstances when the court rejected Petitioner's tender.] (The Petitioner, in fact did deposit $100,000.00 cash of his own money for a supersedeas bond. This was reduced to $60,000.00 after Petitioners application to the Surpeme Court.

The court waived the three-day notice for eviction as to the sub-tenant and required him to post $100,000.00 cash supersedeas bond for appeal. The court required the sub-tenant to pay to the owner the tenant's rent during the sub-tenant's possession of the sub-tenant's portion of the premises.

During his appeal, and one day while the sub-tenant was away from the premises, and without notice to him, the owner entered the premises and dumped the sub-tenant's antiques into the street, demolishing them; leaving the residue to the pickers.

The appellate court denied the sub-tenant any relief, however it ruled that the owner was not entitled to attorneys' fees, costs and damages on the appeal. Nevertheless, the owner went back to the trial judge, filed a claim against the supersedeas bond posted by the sub-tenant in the amount of $81,784.72, asking for costs and back rent owed by the prime tenant to the owner, including costs, damages and attorneys' fees on appeal; contrary to the judgment of the appellate court. [The owner announced that any complaint for back rent owed by the tenant was worthless against the tenant and asked for recovery of this back rent from the bond posted by the sub-tenant (see page 8 of Plaintiff's Supplemental Memorandum of Points and Authorities in Support of Motion for Imposition of Damages Against Bond).]

The trial judge referred the owner's claim to the Auditor-Master for the calculation of damages (see Appendix No. 6, pp. 22a-24a), with an order of reference which enlarged the relief sought by the owner in his pleadings and limited the relief sought by the sub-tenant in his pleadings; an order which foreclosed the sub-tenant's right of relief and barred a counterclaim by the sub-tenant against the owner, and from which there is no appeal. The District of Columbia Court of Appeals has denied Petitioner his right to counterclaim.

The owner, Whitehurst Associates, is a limited partnership; its general partner, Joseph Miller, is a resident of Maryland;

the business address of Whitehurst Associates is also located in Maryland. Rule 5(b) of Landlord and Tenant Rules, Superior Court of the District of Columbia precludes a legal action against the owner. The sub-tenant elected to pursue his counter claim for relief against the owner in the state of Maryland, with his retained counsel. However, and because of the lack of reciprocity of the District of Columbia with Maryland, Petitioner, with present counsel, was unable to initiate and pursue his action in Maryland. Petitioner sought to enjoin any further proceedings until reciprocity was granted, alleging that existing rules of residency requirements for admission would permit the owner to defend a suit in Maryland with his presently retained counsel, whereas Petitioner would have to seek new counsel. The court accepted Petitioner's pleadings in support of its motion to enjoin the proceedings (see Appendix No. 4a, pp. 10a-12a). The court accepted the pleadings of the owner (see Appendix No. 4c, p. 16a); the court accepted the pleadings of the tenant (see Appendix No. 4b, pp. 14a-15a). However, the court, on June 22, 1976 (see Appendix No. 4, pp. 8a-9a), declined jurisdiction and returned the original responsive pleadings file stamped, but unlodged and undocketed.

REASONS WHY THE WRIT SHOULD BE GRANTED

There are conflicting opinions in state jurisdictions as to the rights of a leasehold sub-tenant. The District of Columbia Court of Appeals has adopted an interpretation that makes the District of Columbia Statute not only unconstitutional, but has acted unconstitutionally in denying Petitioner due process and equal protection of the law (see

Trans-Lux Radio City Corp. v. Service Parking Corp., D.C. Mun. App., 54 A.2d 144, and *Grayvan Lines, Inc. v. Nesmith*, 50 A.2d 434 (1946)) and redress to its Courts by its citizens.

The District of Columbia Court of Appeals, in refusing to determine reciprocity between the District of Columbia and Maryland and Virginia lawyers, prohibited Petitioner and his District of Columbia resident lawyer from pursuing Petitioner's counterclaim against the Respondent into Respondents' home jurisdiction, giving protection to the non-residents, and failing to afford redress for the residents.

The law abhors the forfeiture of a property interest as well as the violation of Constitutional rights. *Equal Justice Under Law* does not mean that everyone is equal; it means that everyone shall be treated equally under the law. The question, therefore, is whether or not the Petitioner, when he alleges violation of his due process rights and unequal treatment by law, is entitled to lesser protection than the other parties.

CONCLUSION

For the reasons herein, the Petitioner asks that the Petition for a Writ of Certiorari to the District of Columbia Court of Appeals be granted.

Respectfully submitted,

WILLIAM A. BURLESON
MICHAEL C. McGOINGS
1000 Pennsylvania Ave., S.E.
Washington, D.C. 20003
Attorneys for Petitioner

APPENDIX

1. Judgment of the District of Columbia Court of Appeals, filed December 15, 1976.

2. Petitioner's Petition for Reconsideration and Hearing En Banc.

3. Order of the District of Columbia Court of Appeals denying Petitioner's Petition, filed February 11, 1977.

4. Order of the District of Columbia Court of Appeals returning Petitioner's Motion and Responsive Pleadings, filed June 22, 1976.

   a. Opposition To Motion To Adopt Intervening Defendant-Appellant's Brief With Motion To Enjoin All Further Proceedings In The Above Action Until This Court Resolves The Question Of The Absence Of Reciprocal Privileges Of District Of Columbia Resident Attorneys In The Admission To Maryland And Virginia Bars And The Prohibition Of The Practice Of Law By Those Resident Attorneys Of The District Of Columbia In The Cours Of The States Of Maryland And Virginia.

   b. Comments by attorney for tenant.

   c. Opposition by attorney for owner.

   d. Reply by Petitioner.

5. General Docket of the District of Columbia Court of Appeals.

6. Order of the Superior Court of the District of Columbia appointing Auditor-Master, filed March 31, 1977.

DISTRICT OF COLUMBIA
COURT OF APPEALS

GEORGETOWN ANTIQUES & ARTISANS
and JOYOUS JUNQUES, INC.,

Appellants,

v.

WHITEHURST ASSOCIATES,

Appellee.

Appeal from the Superior Court of the District of Columbia,
Civil Divison.

BEFORE: Newman, Chief Judge, Harris, Associate Judge and
Reilly, Chief Judge, Retired.

JUDGMENT

The subtenant contends on appeal that the trial court erred in dismissing the complaint for equitable relief. We disagree. It is well-established that a subtenant has no greater rights than the principal tenant. *Thayer v. Brainerd,* D.C.Mun.App., 47 A.2d 787, 789 (1946). While an exception to this rule has been held to arise when the landlord accepts or ratifies the sublease, in which case the sub-

lease is enforceable against the landlord, *Camp v. Goodman,* D.C.Mun.App., 47 A.2d 516 (1946), the trial court specifically found that plaintiff did not assume, adopt, ratify, or take over the sublease. The court's findings on this issue were adequately supported by the record. Plaintiff therefore owed no duty to the subtenant and, accordingly, the subtenant was not entitled to equitable relief. The trial court was also correct in refusing to dismiss the complaint for possession or set aside the granting of summary judgment.

The pra'er of plaintiff seeking damages, double costs and attorney's fees re this appeal is denied.

Accordingly, it is this *15th* day of December, 1976,

ORDERED and ADJUDGED that the judgment appealed from is hereby affirmed.

PER CURIAM.

For the Court:

Alexander L. Stevas,
Clerk of the Court.

Copies to:

Honorable W. Byron Sorrell
Judge, Superior Court of the District of Columbia

Clerk, Superior Court of the District of Columbia

William A. Burleson, Esquire
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Counsel for appellant, Joyous Junques

George J. Viertel, Esquire
702 Law Building
147 Granby Street
Norfolk, Virginia 23510
Counsel for Georgetown Antiques

Sheldon B. Kamins, Esquire
1140 Connecticut Ave., N.W.
Counsel for appellee.

DISTRICT OF COLUMBIA COURT OF APPEALS

GEORGETOWN ANTIQUES & ARTISANS
and JOYOUS JUNQUES, INC.

Appellants

v.

JOSEPH MILLER, General Partner
WHITEHURST ASSOCIATES

Appellee

PETITION FOR RECONSIDERATION AND HEARING EN BANC

The question is whether or not the intervenor, when he alleges violation of his due process of rights and unequal treatment by law, is entitled to lesser protection than the other parties.

The trial judge permitted the intervenor to participate in the proceedings after the plaintiff had obtained a summary judgment for possession. However, the Court stated it would not set aside the judgment for possession of the the premises obtained by the plaintiff against the defendant.

During the course of the proceedings, the intervenor, while in possession of the premises, asked for a hearing and made a tender of all back rent due to the plaintiff, by the defendant, including interest and costs. The plaintiff refused the tender, and the Court refused the hearing. The intervenor, among other things, was prepared to show that he had a consignment agreement with the defendant Georgetown Antiques & Artisans; that intervenor actually owned one-third of Georgetown Antiques & Artisans; that stock had been issued to him, and his ownership began prior to plaintiff's complaint for possession. (See attached letter concerning conveyance of stock from Georgetown Antiques & Artisans to intervenor.)

Upon noting an appeal from the decision of the trial court, the intervenor was required to post a $100,000.00 cash supersedeas bond, pay $9,000.00 back rent to the plaintiff and pay $6,013.33 monthly rent under the terms of the lease existing between the plaintiff and defendant. The plaintiff accepted this money from intervenor, refused to make the premises habitable for intervenor's business and without giving notice to the intervenor or to proper police authorities, dumped his possessions into the street, destroying them.

Intervenor states that there has been an invidious discrimination by the law in favor of the other parties at the expense of the intervenor, and that there exist a complete denial of equal protection and due process where his rights, interests and liabilities are concerned.

Even though this court denied plaintiff's request for damages, double costs and attorney's fees, the plaintiffs have just filed an action in the trial court asking that damages be assessed and have quoted Appellate Court Rule 8(B) in support of their attempt to seize the remaining $40,000.00 placed in the court registry by the intervenor.

The intervenor, in opposing defendant-appellant's motion to adopt his brief, and in anticipation of having his District of Columbia resident counsel pursue the plaintiff, a non-resident of the District of Columbia, into Maryland and Viringia for further redress in this action, asked this court to enjoin further proceedings until it resolved the question of the absence of reciprocal privileges for District of Columbia resident attorneys into the courts of Maryland and Virginia.

Defendant and plaintiff filed responses to the motion, to which intervenor filed a reply. Sometime later the court court returned the lodged, original motion and responsive pleadings to the parties.

Respectfully submitted,

WILLIAM A. BURLESON No. 135-277
Attorney for Appellant-
Intervening Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were mailed, postage prepaid, this 30th day of December, 1976, to: Sheldon B. Kamins, Esquire, 1140 Connecticut Avenue, N.W., Washington, D.C., Attorney for Appellee, and to George J. Viertel, Esquire, 702 Law Building, 147 Granby Street, Norfolk, Virginia, Attorney for Appellant-Defendant.

WILLIAM A. BURLESON No. 135-277
Attorney for Appellant-
Intervening Defendant

DISTRICT OF COLUMBIA COURT OF APPEALS

GEORGETOWN ANTIQUES & ARTISANS AND JOYOUS JUNQUES, INC.,

Appellants,

v.

WHITEHURST ASSOCIATES,

Appellee.

BEFORE: Newman, Chief Judge; Kelly, Fickling, *Kern, Gallagher, Nebeker, Yeagley, Harris and Mack, Associate Judges; and Reilly, Chief Judge, Retired.

ORDER

The petition of appellant Joyous Junques, Inc., for a hearing *en banc* having been transmitted to the judges of this Court for consideration, and no judge having called for a vote with respect thereto, it is

ORDERED that the aforesaid petition for a hearing *en banc* is denied.

PER CURIAM.

Copies to:

Honorable W. Byron Sorrell
Judge, Superior Court of the District of Columbia

Clerk, Superior Court of the District of Columbia

William A. Burleson, Esquire
1000 Pennsylvania Ave., S.E. (3)

Sheldon B. Kamins, Esquire
1140 Connecticut Avenue, N.W.

* Associate Judge Fickling did not participate in the foregoing order.

DISTRICT OF COLUMBIA
COURT OF APPEALS

GEORGETOWN ANTIQUES & ARTISANS AND JOYOUS JUNQUES, INC.,

Appellants,

v.

WHITEHURST ASSOCIATES,

Appellee.

BEFORE: Nebeker and Harris, Associate Judges.

ORDER

The Clerk is directed to return unfiled the loged motion to adopt the brief of the co-appellant submitted on behalf of appellant Georgetown Antiques by Mr. William S. Bach, and the responsive pleadings lodged with respect thereto.

The time for the filing by an attorney who is an active member of the Bar of this Court, of a brief for appellant, Georgetown Antiques, or a motion to adopt the co-appellant's brief, is extended for a period of 10 days from the date of this order. Since Rule 28(i) allows any party to adopt by reference any part of the brief of another, if a motion to adopt is filed, the motion will be granted. If a brief or motion to adopt is not filed within the 10-day period, the appeal of appellant, Georgetown Antiques, shall stand automatically dismissed.

In the event a brief or motion to adopt is filed by counsel for Georgetown Antiques, counsel for appellee is granted 30 days from the date of service thereof to file a responsive memorandum or a supplemental brief.

PER CURIAM.

Copies to:

Honorable W. Byron Sorrell
Judge, Superior Court of the District of Columbia

Clerk, Superior Court of the District of Columbia

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DISTRICT OF COLUMBIA COURT OF APPEALS

GEORGETOWN ANTIQUES & ARTISANS, INC.
and JOYOUS JUNQUES, INC.

Appellants

v.

JOSEPH MILLER, General Partner
WHITEHURST ASSOCIATES

Appellee

OPPOSITION TO MOTION TO ADOPT INTERVENING DEFENDANT-APPELLANT'S BRIEF WITH MOTION TO ENJOIN ALL FURTHER PROCEEDINGS IN THE ABOVE ACTION UNTIL THIS COURT RESOLVES THE QUESTION OF THE ABSENCE OF RECIPROCAL PRIVILEGES OF DISTRICT OF COLUMBIA RESIDENT ATTORNEYS IN THE ADMISSION TO MARYLAND AND VIRGINIA BARS AND THE PROHIBITION OF THE PRACTICE OF LAW BY THOSE RESIDENT ATTORNEYS OF THE DISTRICT OF COLUMBIA IN THE COURTS OF THE STATES OF MARYLAND AND VIRGINIA

1. Appellant-Intervening Defendant, Joyous Junques, Inc. states that his rights are different from those of the Appellant-Defendant, Georgetown Antiques & Artisans, Inc. There was no allegation that Appellant-Intervening Defendant Joyous Junques, Inc. was ever behind in the payment of his rent; in fact, he never was. Intervenor had a written valid existing lease; the eviction action was against Appellant-Defendant Georgetown Antiques & Artisans, Inc. and Appellant-Intervenor should have been given notice of this action by the Appellee, who had knowledge of and ratified the lease of Joyous Junques, Inc. Defendant Georgetown Antiques & Artisans, Inc. was the agent of the Appellee Whitehurst Associates when the Intervenor signed his lease with Georgetown Antiques

& Artisans, Inc. Appellant Georgetown Antiques & Artisans, Inc. retained counsel to represent them in the lower Court; one of whom has already filed a pleading in this Court, having the office address of Norfolk, Virginia.

2. Two of the parties live in Maryland and the Attorneys for the parties live in the District of Columbia, Maryland and Virginia; this case therefore, concerns itself with the District of Columbia Court of Appeals granting to members of the Bar of other jurisdictions, admission to the District of Columbia Bar without the residency requirement, while the neighboring jurisdictions make residency a prerequisite of admission to their Bars.

This Court should conform its admission requirements to those of Maryland and Virginia, or, in the alternative, obtain reciprocal privileges for the District of Columbia resident practicing attorneys to gain admission into the Bars, and to actively practice in the Courts of Maryland and Virginia.

This present practice in the District of Columbia violates the resident District of Columbia lawyer's Constitutional rights and deprives him of an economic livelihood in the jurisdiction where he lives and practices his chosen profession. It also deprives his client of due process and equal treatment under the law.

To require residency in the District of Columbia as a prerequisite for admission to the District of Columbia Bar is consistent with the upholding by the Supreme Court concerning the validity of a condition placed upon municipal employment that a person be a resident at the time of his application.

Furthermore, Congress has required, in the nomination and appointment of District of Columbia Judges, that they be bona fide residents of the District of Columbia.

3. Appellant-Defendant Georgetown Antiques & Artisans, Inc.'s Vice-President's Motion to incorporate Appellant-Intervenor's brief does not indicate that he has counsel in this appeal; even though he was represented by counsel in the lower Court, with the same counsel filing a pleading in this Court.

Regardless of any decision that this Court may make as to the issues in this present action, District of Columbia resident counsel will have to be involved in incidental litigation from this decision. This litigation will be in the states of Maryland and Virginia, in which the individual parties in this action reside, and from which the resident District of Columbia counsel is excluded admission to their Bars and from actively practicing in their Courts.

The Appellant-Intervening Defendant asks this Court to Order the Appellant-Defendant Corporation to obtain counsel, and to file its own Appellant's brief. The Appellant-Intervening Defendant asks that this Court stay and enjoin any further action on this case until this Court rules on the issue of Reciprocity for membership of District of Columbia resident attorneys into the Bars of Maryland and Virginia, and to actively participate in their Courts.

Respectfully submitted,

WILLIAM A. BURLESON No. 135-277
Attorney for Appellant-
Intervening Defendant

DISTRICT OF COLUMBIA
COURT OF APPEALS

GEORGETOWN ANTIQUES & ARTISANS, INC.
and JOYOUS JUNQUES, INC.

Appellants

v.

JOSEPH MILLER, General Partner
WHITEHURST ASSOCIATES

Appellee

POINTS AND AUTHORITIES

Constitution of the United States, 5th & 14th Amendments, (Including Full Faith and Credit, Due Process and Equal Protection)

D.C. Code T 11-Sec. 2501, (Admission to Bar-Right to Practice)

D.C. Code T 11, Appendix, Sec. 433, (Nomination and Appointment of Judges)

D.C. Court of Appeals, Rule 46, (Admission to the Bar), Bar Rules, Rule 11, (Membership)

Superior Court Rules, Rule 101, (Practice Before This Court)

Court of Appeals of Maryland, Rule 14, (Admission of Out-of-State Attorneys)

Virginia Supreme Court of Appeals, Va. Code, T-54, Sec. 1-74, (Admission of Out-of-State Attorneys)

CASES

McCarthy v. Philadelphia Civil Service Commission-Per Curiam Order Supreme Court, 75-783 ____, March 22, 1976 _____, 44 L W 3530

GEORGETOWN ANTIQUES AND
ARTISANS, INC. and JOYOUS JUNQUES, INC.
Appellants

v.

WHITEHURST ASSOCIATES
Appellee

COMMENTS ADDRESSED TO MOTION
OF APPELLANT, JOYOUS JUNQUES, INC.
TO ENJOIN PROCEEDINGS

Now comes the appellant, Georgetown Antiques and Artisans, Inc. by and through its counsel, George J. Viertel, and for comments addressed to the motion of the appellant Joyous Junques, Inc. to enjoin the proceedings herein, says:

1. The statements set forth in Paragraph 1 of the appellant-intervening defendant's memorandum in opposition to motion to adopt appellant defendant's brief and motion to enjoin further proceedings is substantially correct, except that this counsel, who has requested that all correspondence be addressed to his main office in Norfolk, Virginia, also maintains an office at Suite W935, 1011 Arlington Boulevard, Arlington, Virginia, 22209 in accordance with the Rules of this Honorable Court.

2. With regard to appellant-intervening defendant's motion referred to above, directed to the admission requirements for Virginia and Maryland counsel to obtain reciprocal privileges for the District of Columbia and the requirements for resident practicing attorneys to gain admission in-

to the Bars of Maryland and Virginia in the future, his position would appear to be equitable. This counsel questions whether this Honorable Court has the authority to accomplish the ends requested by the appellant-intervening defendant's motion to enjoin until reciprocal privileges are granted. For the information and record of this Court, this counsel attaches hereto copies of Virginia Code 54-60 and the Rules Part One A of the Virginia Supreme Court of Appeals, governing the admission of foreign attorneys to the Virginia Courts, which requires residency in Virginia prior to taking the Virginia State Bar examination or for admission of foreign attorneys without examination.

Respectfully submitted,

George J. Viertel
Attorney for Appellant

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Norfolk, Virginia 23510

GEORGETOWN ANTIQUES and ARTISANS, INC.
and JOYOUS JUNQUES, INC.

Appellants

v.

WHITEHURST ASSOCIATES

Appellee

OPPOSITION TO MOTION OF APPELLANT JOYOUS JUNQUES, INC. TO ENJOIN PROCEEDINGS

Comes now the Appellee, Whitehurst Associates, by and through its counsel, Deckelbaum, Wolpert and Ogens, and in opposition to the Motion of Appellant, Joyous Junques, Inc. to enjoin further proceedings herein says:

1. At best the Motion raises a collateral issue not appropriate for resolution in this litigation.

2. The Motion is frivilous and should be summarily denied.

DECKELBAUM, WOLPERT & OGENS

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(202) 223 - 1474

DISTRICT OF COLUMBIA
COURT OF APPEALS

GEORGETOWN ANTIQUES & ARTISANS, INC.
and JOYOUS JUNQUES, INC.

Appellants

v.

JOSEPH MILLER, General Partner
WHITEHURST ASSOCIATES

Appellee

REPLY TO APPELLEE'S OPPOSITION TO MOTION OF APPELLANT JOYOUS JUNQUES, INC. TO ENJOIN PROCEEDINGS

1. The issue concerning reciprocity of lawyers who are residents of the District of Columbia and qualified to practice before the District of Columbia Courts, but who are excluded from practicing in the Maryland and Virginia Courts because of their residency requirements for admission to their Bars is not collateral to the case at hand. Among other things, the Appellant-Intervening Defendant elects to exercise his remedial rights in the Courts of Maryland and Virginia once this case has been decided by this Court. The Appellee, Whitehurst Associates, a limited partnership, has its business address and residence in Maryland. The Appellant Joyous Junques Inc. does not reside nor do business in Maryland, and its counsel, a bona fide resident of the District of Columbia, is unable to pursue this forthcoming litigation on behalf of his client into the Maryland or Virginia Courts.

2. This Court can take judicial notice that of the approximately 22,000 lawyers who are admitted to practice

in the District of Columbia Courts, there are at least 300 bona fide resident lawyers of the District of Columbia who, because of the residency requirements for admission to the Maryland and Virginia Bars, are not permitted to actively practice law in the States of Maryland and Virginia, and who would petition that this Court obtain for them reciprocal privilidges in their admission to the Maryland and Virginia Bars; or in the alternative, require those Maryland and Virginia lawyers to move their residences and law offices into the District of Columbia, as a precondition to their admission to practice before the District of Columbia Courts.

Further, if requested, counsel for the Appellant-Intervening Defendant will secure a petition of at least 300 District of Columbia resident lawyers who are not permitted to become members of the Maryland or Virginia Bars because of these residency requirements for admission.

3. The judicial sovereign must protect its residents from outside encroachment and this protection should at least be equal to that protection afforded by other judicial sovereigns to their citizens. If District of Columbia employees can be required to live in the District of Columbia and District of Columbia taxi cabs are prohibited from picking up fares at National Airport, why shouldn't equal consideration be given to those District of Columbia lawyers whose livelihood can only be secured in the District of Columbia due to one-sided competition.

Respectfully submitted,

WILLIAM A. BURLESON No. 135-277
Attorney for Appellant-
Intervening Defendant-Joyous
Junques, Inc.

DISTRICT OF COLUMBIA COURT OF APPEALS

GOERGETOWN ANTIQUES & ARTISANS
and JOYOUS JUNQUES, INC.,
Appellants,

v.

WHITEHURST ASSOCIATES,
Appellee.

10/15/75	Preliminary record
10/15/75	Motion of appellant for stay
10/15/75	ORDER granting appellants' motion for stay and restraining appellee from executing writ of restitution pending further order of this Court. (Judges Reilly and Harris)
10/16/75	Opposition of appellee to motion for stay, etc. (m - 16)
10/17/75	ORDER terminating this Court's interim stay of October 15 and denying appellants' motion for stay. (Judges Harris and Mack)
10/21/75	Motion of appellee for expedited increase in supersedeas bond (m - 21)
10/21/75	Opposition of appellants to motion for expedited increase, etc (m - 20)
10/22/75	Order denying appellee's motion for expedited increase in supersedeas bond without prejudice. (Harris and Mack)
11/24/75	Motion of appellee to dismiss (m - 20)
12/1/75	Opposition of appellant to motion to dismiss (m - 1)

12/11/75	Transcript of Record. (RTC) - In large record drawer
3/4/76	ORDER denying appellee's motion to docket and dismiss. (Judges Kern and Mack)
3/8/76	Supplemental record (613 pages of transcript) (n)
4/15/76	Motion of appellant, Georgetown Antiques, to extend time to file brief to May 19th (m - 14)
4/16/76	Appellant's (Joyous Junques) brief (m - 16) List per Rule 30 Appendix
4/26/76	Opposition of appellee to appellant's motion for an ext. of time to file brief to May 19(m - 26)
4/30/76	Motion of appellee to dismiss (m - 30)
5/7/76	Opposition of appellant, Georgetown Antiques, etc. to motion to dismiss (m - 5)
5/10/76	Opposition of appellant, Joyous Junques, Inc., to motion to dismiss (m - 7)
5/19/76	Appellee's Brief (m - 5)
6/7/76	Appellant's reply brief (m - 5)
6/22/76	Order denying appellee's motion to dismiss. (Judges Nebeker and Harris)
6/22/76	Order directing the Clerk to return the lodged motion to adopt the brief of the co-appellant submitted on behalf of appellant and the responsive pleadings lodged with respect thereto. The time to file a brief for appellant is extended for a period of 10 days from the date of this order. If a brief of motion to adopt is not filed within the 10-day period, the appeal of appellant, Georgetown Antiques shall stand dismissed. If a brief of motion to adopt is filed by counsel,

	appellee has 30 days from the date of service to file a responsive memorandum or brief. (Judges Nebeker and Harris)
7/1/76	Appellant's brief (Georgetown Antiques and Artisans) (m - 28) List.
11/1/76	Motion of appellant, Georgetown Antiques, etc. to submit (letter form)
11/15/76	Letter from Clerk notifying appellant, Georgetown Antiques, etc. that the request to submit was granted.
11/17/76	Argued before Judges Newman, Harris and Reilly.
12/15/76	JUDGMENT affirming judgment of trial court, without opinion. (Judges Newman, Harris and Reilly)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
LANDLORD AND TENANT SECTION
CIVIL DIVISION

JOSEPH MILLER AS GENERAL PARTNER OF
WHITEHURST ASSOCIATES, A LIMITED PARTNERSHIP

v.

GEORGETOWN ANTIQUES and ARTISANS, INC.,
Defendant

and JOYOUS JUNQUES, INC.,
Intervening Defendant

ORDER

Plaintiff Whitehurst Associates filed an action for possession of real property against its tenant. Georgetown Antiques and Artisans, Inc. alleging the nonpayment of rent. There being no material issues of fact, summary judgment was granted. Subsequently, a subtenant, Joyous Junques, Inc. filed a motion to intervene and a verified complaint for equitable relief which alleged that plaintiff had ratified its five-year sublease. Trial was held before this Court on the verified complaint and on October 15, 1975, a Judgment was entered which denied relief and dismissed the complaint.

Subsequently, both the tenant and the subtenant filed an appeal and supercedeas bond of $100,000 was imposed to secure payment for damages which might accrue to plaintiff from the stay of this Court's Judgment granting

possession of the realty. On November 21, 1975, the supercedeas bond was decreased to $40,000 and the appellants were required to continue to pay the monthly rent as it became due.

On December 15, 1976, the Court of Appeals affirmed the Judgment of this Trial Court and plaintiff filed a Motion to Assess Damages Against Bond. The Court attempted to hold a hearing on the motion, but when it appeared that counsels' arguments were involved and time consuming, it was determined that the matter would be certified to the Auditor Master's Division as the Court does not have the time in its felony calendar to permit proper consideration of this matter.

The Auditor Master's Division of the Superior Court is directed to make findings and recommendations on the following sources of potential damages: (1) rent in arrears as of October 14, 1975, (2) lost rental income from the period of October 15, 1975, through December 15, 1976, (3) other damages resulting from the stay of the Order of repossession (e.g., lost income resulting from the inability to execute a new lease with a prospective tenant who had already signed the lease), (4) costs on appeal, (5) cost for physical eviction, and (6) interest. The Auditor Master should also consider any proper setoffs, such as the payment of rent and the execution of a lease with a new tenant.

Therefore, it is, this *30th* day of March, 1977,

ORDERED that the Auditor Master Division of the Superior Court will conduct such hearings as are necessary to determine what damages are properly assessable against

the supercedeas bond and what setoffs, if any, can be properly credited to the defendant and intervenor.

By the Court,

W. BYRON SORRELL
JUDGE

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